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IN THE

Supreme Court of the United States.

OCTOBER TERM—[redacted]1925

PANAMA RAILROAD COMPANY,

Petitioner,

—against—

AGAPITO VASQUEZ, as Administrator of the Goods, Chattels and Credits which were of Maximiliano Sanchez, deceased,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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1. The question which the Petitioner seeks to have reviewed in this case is whether *Section 20 of the Act of March 4, 1915, C. 153, 38 Stat. 1185, as amended by Section 33 of the Act of June 5, 1920, C. 250, 41 Stat. 1007, commonly known as the Jones Act,* which made certain substantive changes in the general maritime law with respect to actions for death and injury by seamen, is applicable to an action brought by the representatives of a deceased seaman in the New York State courts.

Respondent believes that this question has already been decided adversely to the Petitioner by this Court in *Panama Railroad Company* v. *Johnson,* 264 U. S. 375,

and *In Re East River Towing Co., Inc.*, decided by this Court December 8, 1924, not yet reported.

2. The present action was brought under the provisions of Section 33 of the Jones Act in the New York Supreme Court, Kings County, by the representatives of a deceased seaman, to recover damages for his death by the wrongful act of his employer.

The complaint alleges that Sanchez, the plaintiff's intestate, while in the employ of the defendant as a seaman, was killed on August 26, 1921, on board the defendant's steamer "General W. C. Gorgas," then in the waters of the State of New York, by coming in contact with a wire heavily charged with electricity.

Paragraph sixth of the complaint alleged that the injuries which caused the death of Sanchez were due to the dangerous, defective and unseaworthy condition of an electric wire and its appurtenances, which were part of the equipment and appliances furnished by the defendant as owner of the steamship "General W. C. Gorgas."

By paragraph eighth of the complaint, the plaintiff elected to have the action proceed under the Jones Act.

The defendant's answer constituted, in substance, a general denial of the allegations of negligence.

The case duly came on for trial in the New York Supreme Court and resulted in a verdict in favor of the plaintiff for $9,900, which was subsequently reduced by the Court to $7,000 and judgment entered for that amount.

The Petitioner thereupon filed an appeal to the Appellate Division of the Supreme Court for the Second Judicial Department, where the judgment was affirmed, with a slight modification not material here.

Thereafter the Petitioner took an appeal to the Court of Appeals for the State of New York, which affirmed the judgment below without opinion.

3. The Petitioner's contention that the Act applies only to actions brought in the Federal Court is based on the last sentence of Section 33 of the Jones Act, which reads as follows:

> "Jurisdiction in such actions shall be under the Court of the District in which the defendant employer resides or in which his principal office is located."

A similar contention was made by this Petitioner in *Panama Railroad Company* v. *Johnson,* 264 U. S. 375. In that case it was urged that Section 33 of the Jones Act was unconstitutional because of a supposed interference with the uniformity of the general maritime law by providing different rights in actions brought on the common law side of the Federal Court and in admiralty proceedings.

This Court pointed out that this position was untenable and held that the substantive provisions of Section 33 of the Jones Act are applicable whether the proceeding is in admiralty or on the common law side of the Federal Court.

It seems to us quite clear from the decision in *Panama Railroad Co.* v. *Johnson, supra,* that the substantive provisions of Section 33 of the Jones Act, are equally applicable whether an action is brought by a seaman in admiralty, in a State court or on the common law side of the Federal Court.

As this Court pointed out in *Panama Railroad Co.* v. *Johnson,* the provision contained in the last sentence of Section 33 only prescribes the *Venue* for actions brought under the section.

In this connection, Mr. Justice Vandevanter, writing for the Court, said:

> "A reading of the provision now before us with those sections (Sections 24, 51 of the Judicial Code) and in the light of the policy carried into them, makes it reasonably certain that the provision is not intended to effect the general jurisdiction of the District Courts, as defined in section 24, but only to prescribe the venue for actions brought under the new act of which it is a part. No reason why it should have a different purpose has been suggested nor do we perceive any. Its use of the word 'jurisdiction' seems inapt, and therefore not of special significance. The words 'shall be' are stressed by the defendant, but as they are found also in the earlier provisions, which uniformly have been held to relate to venue only, they afford no ground for a distinction."

Of course, if the provision referred to related to "jurisdiction" and not merely to "venue" then, the District Court in which the defendant resided or in which its principal office was located, would be the only Court in the world which could apply the Jones Act.

However, the Federal Employers Liability Act expressly provides that the state courts shall have jurisdiction of actions brought thereunder and, as the Jones Act makes the Federal Employers Liability Act applicable to seamen in its entirety, it must be conceded that state courts will have jurisdiction of actions under the Jones Act unless there is something in the Jones Act itself depriving the state courts of jurisdiction. As pointed out by this Court in *Panama Railroad Company* v. *Johnson,* there is not a single word in the Jones Act which deprives the state courts of jurisdiction, the clause under discussion merely designates the federal district in which such actions shall be brought when a federal court is used as a vehicle, and the word "jurisdiction" as employed in the statute was used inaptly and does not refer to *"jurisdiction"* but is synonymous with "venue."

As already said, the statute is merely regulatory of *"venue"* when suit is brought in a federal court and does not attempt to regulate venue where action is brought in the state court. However, it is submitted that even if such were the case, a general appearance in the state court would constitute a waiver of the right to object to venue. It is not disputed that the defendant entered a general appearance in the case at bar.

Furthermore, as this Court pointed out in *Panama Railroad Co.* v. *Johnson,* Congress has pursued the policy of investing the federal courts with general jurisdiction, expressed in terms applicable alike to all of them, and of regulating the venue by separate provisions designating the particular district in which the defendant shall be sued, the purpose of the venue being to prevent defendants from being compelled to answer and defend in remote districts against their will.

In granting the federal courts general jurisdiction, Congress specifically saved to suitors "the right of a common law remedy." Judicial Code, Section 256. This, of course, means an action in the state court.

Chelentis v. *Luckenbach,* 247 U. S. 372.

Furthermore, to hold that a state court did not have jurisdiction to administer the Jones Act, would mean an unconstitutional encroachment on the maritime jurisdiction by interfering with its uniformity.

Southern Pacific Co. v. *Jensen,* 244 U. S. 205;
Knickerbocker Ice Co. v. *Stewart,* 253 U. S. 149;
Washington v. *Dawson & Co.,* 264 U. S. 219.

This Court, in *Panama Railroad Co.* v. *Johnson,* has

held that the Jones Act is merely an amendment to the maritime law.

The maritime law must be uniform in operation in *all* courts. *Ex parte State of New York*, 256 U. S. 490. In that case the Court said at page 502 (italics ours):

> "The symmetry and harmony maintained in those cases consists in the uniform operation and effect of the characteristic principles and rules of the maritime law as a body of substantive law operative alike upon all who are subject to the jurisdiction of the admiralty, *and binding upon other courts as well.*"

In *In Re East River Towing Co., Inc.*, decided by this Court, December 8, 1924, not yet reported, the steamtug "Edward," owned by the East River Towing Corporation, sank in New York Harbor because of an explosion of her boiler. This caused the death of her Captain, Thos. McCaffrey, and his administratrix brought suit against the company in the Supreme Court of New York. Thereupon the company filed a petition for limitation of liability in the District Court of the United States. The District Court made an order under Rule 51 restraining further prosecution of the suit, and, on motion, vacated the stay on the ground that the statutes limiting liability were repealed so far as they applied to the case by Section 33 of the Jones Act.

The Circuit Court of Appeals for the Second Circuit, certified two questions to this Court, the first of which was:

1. If an action at law be brought such as is described in the Merchant Marine Act of 1920, Section 33, can prosecution thereof be enjoined by the injunction provided for in Admiralty Rule 51?

This Court answered that question in the affirmative.

Mr. Justice Holmes, writing the opinion, said:

> "We answer these questions as they are asked and assume that the State Court had jurisdiction to try the case under the concluding words of the section: 'Jurisdiction in such actions shall be under the Court of the District in which the defendant employer resides, or in which his principal office is located."

It is submitted, however, that the statement that this Court assumed that the State Court had jurisdiction was more than a mere assumption. If the State Court under the facts in the *East River Towing Company* case had not had jurisdiction, there would be nothing to be restrained under Rule 51 because any action of the State Court would have been void.

The petition should be denied.

Respectfully submitted,

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